STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

DIRECTORATE: PLANNING AND ECONOMIC DEVELOPMENT

DEPARTMENT OF DEVELOPMENT MANAGEMENT

LAND USE MANAGEMENT

www.stellenbosch.gov.za/planning-portal/
FOR GENERAL ENQUIRIES CONTACT landuse.enquiries@stellenbosch.gov.za or 021- 808 8606

INFORMATION GUIDELINE:

SUBMITTING REQUESTS FOR SECTION 28 TRANSFER CERTIFICATES

PURPOSE AND SUBMISSION REQUIREMENTS

The Stellenbosch Municipal Land Use Planning Bylaw (LUPB) stipulates procedures to manage and ensure compliance with the conditions of approval and other requirements in terms of the LUPB. The recorded certification of compliance is required to enable the vesting of such land use rights, failing which the subdivision approval will lapse in accordance with Section 22 of the LUPB.

All subdivision approvals are subject to conditions that a developer/owner must comply with before the transfer and registration of a newly created land unit. Section 28 places the onus on the developer/owner to demonstrate compliance with all relevant conditions of subdivision before submitting a request for clearance, the request for a transfer certificate.

Developers/transferors are expected to seek clarification on conditions of approval, if necessary, immediately after being notified and to put processes in place to submit applications for approval in terms of conditions of approval for, for example, a site development plan or the constitution of the owners' association timeously.

The financial implications of delays caused during the Section 28 transfer certificate process are understood by all and the proper management and coordination of the

process is critical. Submitting complete requests ready for approval simplifies the administrative process.

A request for a transfer certificate in terms of Section 28 is only necessary when the transferor intends to affect the first registration of a land unit arising out of any approved subdivision, which includes a request for a Certificate of Registered Title (CRT). Section 28 is not applicable in any other circumstance.

The transferor is usually the owner/developer's conveyancing attorney who will engage with the Municipality. The certificate may only be issued if the authorised official is satisfied that the requirements of section 21(1) have been met.

A request for a transfer certificate must be submitted by completing the necessary request form, and attaching all required documentation and information needed for the Municipality to consider such request. The onus is on the transferor to provide the proof of compliance. This means that the owner/developer will need to engage with the authorised official as well as the various service departments responsible for imposing any conditions to establish whether the conditions have been met. The required compliance form needs to be completed and duly signed by the respective service departments.

The following must be submitted with the completed request for a transfer certificate form to landuse.certificates@stellenbosch.gov.za:

1) A copy of all relevant decision letters, including final notifications regarding:
   a. Approval of subdivision
   b. Approval of any extension(s) of validity
   c. Approval for the amendment of subdivision plan(s)
   d. Approval for any condition of approval relevant to the certification
2) An approved SG diagram or general plan for the entire subdivision or for an approved phase
3) Power of Attorney (POA) / Certificate of Registered Title (CRT)
4) Signed Transfer Compliance Forms by different departments as evidence that all subdivision conditions have been met, as well as any other conditions in terms of any other applicable legislation relevant to the subdivision or phase thereof
5) If applicable, certification of an owners' association or proof that arrangements have been made that the required portions of land to be transferred to the association upon the transfer of the first land unit are in place [Section 28(3)(a)]
6) Certificate in terms of Section 31(4)(a) of the Deeds Registries Act for the vesting of land in the Municipality, if required [section 28(3)(b)]

An authorised official will check the submitted documentation for completeness and correctness. The correct diagrams and approvals need to have been submitted. And, very importantly, verification of the validity of the subdivision and any associated departure approvals is necessary before taking any further action. If complete, then an invoice is created for the clearance. The fee for the certificate will depend upon the number of erven for which clearance is requested.

General certification process[1]
The process usually involves the following steps.

Preparing request for certification
Step 1: Consult the relevant decision letter(s) and conditions of approval to verify compliance with conditions, to confirm validity of subdivision and to check that the General Plan / Diagram(s) are in accordance with approval.
Step 2: Have a pre-submission consultation with the LUM Office, if required, for any clarification needed and/or to identify the relevant departments to whom the request for certification must be circulated.
Step 3: Circulate required information to relevant departments to solicit their signoff of the compliance form.

Submitting application
Step 4: Submit the completed transfer certificate request form along with all the required supporting documentation to landuse.certificates@stellenbosch.gov.za.

Certification by Municipality in accordance with the Standard Operating Procedure (SOP)
Step 5: LUM Office verify documents and confirm compliance (5 days)
Step 6: Issue invoice and receipt of proof of payment (2 days)
Step 7: Endorse documents and issue certificate (7 days)

A certificate may be issued for one erf or any number of the erven comprising an approved subdivision or general plan, including an approved phase. Before issuing the certificate for the first clearance in the subdivision it must be ensured that all conditions applicable to the subdivision or phase have been complied with as required in terms of the LUPB

Each erf needs a transfer certificate (multiple erven can be listed in one certificate). Once compliance with section 21 has been met, subsequent transfer certificates for any remaining erven can be issued immediately, unless there is a block on such transfer as a result of a condition of approval that allows for certain specific erven or a certain number of erven to be withheld from transfer clearance by a service

[1] **NOTE:** The process and estimated timeframes is only a guideline and may be subject to change due to various factors.

department. An example of this is where the Roads and Stormwater Department includes a condition that only 50% of erven may be transferred until a particular external road/sewer/service has been installed.

COMPLIANCE TO CONDITIONS OF APPROVAL OF AN APPROVED SUBDIVISION IN TERMS OF SECTION 20

Section 20(6) of the LUPB stipulates as follows:

> *20(6) The Municipality must issue a **certificate** to the applicant or any other person on his or her written request **to confirm that all the conditions of approval** contemplated **in subsection 21(1)(c) have been met**, if the applicant has submitted the proof contemplated in that section.*

It is thus an operational procedure that is required from the Directorate Infrastructure Services to certify that a Section 20(6) certificate may be issued, and which will also serve as the required confirmation in terms of Section 21(1)(b) which reads as follows:

> *21(1)(b) completion of the installation of **engineering services** in accordance with the conditions contemplated in section 20(4) and other applicable legislation*

Confirmation of compliance to all conditions relating to the installation of required engineering services must be obtained by the applicant from the Directorate Infrastructure Services on the relevant compliance form.

The following provision in Section 20(7) also needs to be noted:

> *20(7) If the Municipality issues a certificate referred to in subsection (6) in error, the owner is not absolved from **complying with the obligations** imposed in terms of the conditions*

Accordingly, if there should be any oversight in the issuing of the certificate in Section 20(6), it does not absolve the applicant from complying with the requirement to comply with subject condition of approval.

CONFIRMATION OF A SUBDIVISION IN TERMS OF SECTION 21

To confirm that the applicant has to the satisfaction of the Municipality submitted proof of compliance with requirements attached to an approved subdivision.

> *21(1) A subdivision or part thereof is confirmed and cannot lapse when the following requirements are met within the period contemplated in section 22(1):*

Section 21 of the LUPB stipulates the following requirements:

> *(a) approval by the Surveyor-General of the **general plan or diagram** contemplated in section 20(5);*

The approved subdivision may be confirmed and vested in phases, if a phasing plan has been approved by the Municipality, in terms of which demarcated sections of the approved subdivision plan will be dealt with separately. These phases (sections of the approved subdivision plan) will each be dealt with as a separate General Plan, and the clearance and vesting of the subdivision will only apply to that General Plan as a phase of the larger subdivision plan. The approved GP of the approved subdivision plan that needs to be vested has to be submitted by the applicant to the Municipality.

> *(b) completion of the installation of **engineering services** in accordance with the conditions contemplated in section 20(4) and other applicable legislation*

Confirmation of compliance to all conditions relating to the installation of required engineering services must be obtained by the applicant from the Directorate Infrastructure Services.

> *(c) proof to the satisfaction of the Municipality that **all the conditions** of the approved subdivision that must be complied with before compliance with paragraph (d) have been met in respect of the area shown on the general plan or diagram*

The Municipality needs to determine and obtain proof from the applicant, and as provided by responsible Directorates or external Government Departments or service providers, that all conditions of approval as contemplated in terms of Section 66(11) of the LUPB has been complied with.

*(d) registration of the **transfer of ownership** or certificate of registered title in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan*

To facilitate the first registration of the transfer of ownership of a land unit arising from a subdivision in accordance with Section 21(d) in order to conclude the compliance requirements of Section 21(1) to vest the approved subdivision, the Municipality must issue a certificate of compliance to the Registrar of Deeds in terms of Section 28(3) of the LUPB to enable the registration of the subject property. There first must be compliance with the requirements stipulated above with Section 21(a) to (c) before the compliance certificate in terms of Section 28 may be issued and this confirmation involves a certificate in terms of Section 20(6) to confirm all conditions of approval contemplated in Section 21(1)(c) have been met.

If the installation of engineering services and compliance to all conditions of the approved subdivision are not completed on the land reflected on the general plan, the general plan must be withdrawn and a new general plan or diagram(s) is to be submitted to the Surveyor General for the part of the land where the services has been completed as contemplated in Section 22(2).

22(2) If an applicant complies with section 21(1)(b) and (c) only in respect of a part of the land reflected on the general plan contemplated in section 21(1)(a), the applicant must withdraw the general plan and submit a new general plan to the Surveyor-General for that part of the land.

CERTIFICATION IN TERMS OF SECTION 28 TO ENABLE THE FIRST TRANSFER OF A LAND UNIT RESULTING FROM AN APPROVED SUBDIVISION

28. (1) A person may apply to the Registrar of Deeds to register the transfer of a land unit, a certificate of title or certificate of consolidated title, as the case may be, in any of the instances referred to in subsection (3)(a) to (b) only if the Municipality has issued a certificate in terms of this section.

(2) The Registrar of Deeds may register the transfer of a land unit, a certificate of title or certificate of consolidated title, as the case may be, in any of the

instances referred to in subsection (3)(a) to (b) only if the Municipality has issued a certificate in terms of this section.

The following proof must be submitted to the Municipality for the Municipality to issue a certificate as contemplated in Section 28 to enable the first transfer of a land unit:

(3)(a) in the case of ***the first registration of the transfer of ownership of a land unit arising from a subdivision to any person other than the developer and where an owner's association is constituted****, proof that—*

(i) all common property arising from the subdivision has been transferred to the owners' association by virtue of section 29(3)(e); or

(ii) all common property arising from the subdivision will be transferred to the owners' association simultaneously with the registration of the transfer of that land unit

If the option is exercised to transfer all the common property to the owner's association simultaneously with the registration of the transfer of the subject land unit, it must be stated as a condition of the certificate contemplated in Section 28(3).

Proof of the transfer of such common property must subsequently be provided together with the proof of registration / transfer of the land unit in terms of Section 21(1)(d).

(3)(b) in the case of ***the first registration of the transfer of ownership or certificate of registered title of a land unit arising from a subdivision and that leads to the confirmation of the subdivision,*** *proof that—*

(i) land needed for public purposes or other municipal infrastructure as contemplated in terms of a condition imposed under section 66 has been transferred to the Municipality or will be transferred to the Municipality simultaneously with the registration of the transfer of that land unit or certificate of registered title

If the option is exercised to transfer the land earmarked for public purposes to the Municipality simultaneously with the registration of the transfer of the subject land unit, it must be stated as a condition of the certificate contemplated in Section 28(3). Proof of the transfer of such property must subsequently be provided together with the proof of registration/ transfer of the land unit in terms of Section 21(1)(d).

(ii) the engineering services and amenities that must be provided in connection with the subdivision are available

This requirement will be satisfied by a letter of confirmation provided by the Directorate Infrastructure Services. This requirement relates to the availability of external engineering services and capacity and should not be confused by a Section 20(6) certificate as required in Section 28(3)(b)(iii) below.

(iii) a certificate contemplated in section 20(6) has been issued by the Municipality.

WRITTEN CONFIRMATION THAT A SUBDIVISION OR PART OF A SUBDIVISION IS CONFIRMED AND CANNOT LAPSE IN TERMS OF SECTION 21

The approval of a subdivision is valid for a maximum of 10 years in terms of the LUPB. This approval period applies to the entire subdivision. Registration of a single portion from an approved General Plan will only confirm the subdivision for the area covered by the General Plan. If there are approved phases to a subdivision then the confirmation of the first phase will only confirm that particular phase and not any of the others. Any phases that have not been confirmed will lapse five years after the approval date (together with any extensions of validity).

It should be noted that any amendment to an approved subdivision or phase does not change the validity period of the original subdivision approval.

Once the first transfer of a land unit arising from a subdivision has been concluded the required proof of registration or transfer of ownership by means of a Certificate of Registered Title or a Title Deed must be submitted to the Municipality. Only then compliance to Section 21(1)(d) is concluded and can the Municipality confirm in writing in terms of Section 21(3) the vesting of the approved subdivision:

21(3) The Municipality must in writing confirm to the applicant or any other person on his or her written request that a subdivision or part of a subdivision is confirmed if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements referred to in subsection (1)(a) to (d) for the subdivision or part thereof.

Records must be kept of all documents that served as proof for compliance and the written confirmation in terms of Section 21 of the LUPB.

> *21(2) Upon confirmation of a subdivision and part thereof in terms of subsection (1), zonings indicated on an approved subdivision are confirmed and cannot lapse.*

For a variety of reasons, a developer may wish to obtain building plan approval to allow construction on a property prior to the confirmation of the subdivision or phased portion. Section 21(4) does not allow this to happen unless approval is granted by the Municipality.

> *21(4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in subsection (1) or the Municipality approved the construction before the confirmation of the subdivision.*

Refer to the ***Practice Note: Building Plan Applications on Properties where the Subdivision Has Not Yet Vested and/ or Has Not Yet Been Registered*** of April 2023.

CONSOLIDATION OF LAND UNITS

A request for a transfer certificate in terms of Section 28 is only necessary when the transferor intends to affect the first registration of a land unit arising out of any approved subdivision, which includes a request for a Certificate of Registered Title (CRT). Section 28 is not applicable in any other circumstance.

No clearance certificate is required from the Municipality to give effect to the approval of a consolation plan.

> *31(2) If the Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—*
> *(a) the Municipality's decision to approve the consolidation;*
> *(b) the conditions of approval imposed in terms of section 66; and*
> *(c) the approved consolidation plan.*

It is important to note that one must be aware of the need for consolidation in the event of a building or structure straddling existing cadastral boundaries as per Section 38 the Western Cape Land Use Planning Act.

> *38(1) A person may not construct a building or structure that straddles the erf boundaries of two or more contiguous erven without the approval of the municipality.*

If this situation arises then an owner must consolidate before the building plan can be approved.

ENQUIRIES

For the submission of requests for transfer certificates and the payment thereof, as well as for enquiries related to a transfer certificate phone 021 – 808 8682 or send an email to landuse.certificates@stellenbosch.gov.za.

For any general land use management or town planning enquiries, contact the Customer Interface Officer via phone 021 – 808 8606 or send an email to landuse.enquiries@stellenbosch.gov.za.

NOTES

_____

_____

_____

_____

_____

_____

_____